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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

PAUL SCHOLZ, as Trustee, etc.,	
Plaintiff and Appellant,	G055819
v.	(Super. Ct. No. 30-2016-00867927)
SUSANA AUSTIN BEYERL, as Trustee, etc.,	O P I N I O N
Defendant and Respondent.	

Appeal from a judgment of the Superior Court of Orange County, Jacki C. Brown, Judge. Reversed and remanded.

Monica M. Goel and Brandon L. Fieldsted for Appellant.

Patrick E. Smith for Respondent.

* * *

The crux of this appeal is whether the trial court committed reversible error by failing to make certain required findings in its statement of decision on a successor trustee's petition to recover roughly $389,000 of trust assets. According to the successor trustee, the original trustee impermissibly used those assets to purchase a $648,000 house. The successor trustee sought an order directing the return of those funds to the trust, or alternatively, an order vesting the trust with a 60 percent ownership interest in the house, with $389,000 representing 60 percent of the house's purchase price.

At trial, the successor trustee alternatively argued that if the trial court awarded the trust less than a 60 percent interest in the house, the court also should award the trust a judgment for the difference between the $389,000 sought and the lesser ownership interest in the house — the so-called "shortfall." In its statement of decision, the court concluded the original trustee had used only about $251,000 of trust assets in purchasing the house, and it awarded the trust a 39.2 percent interest in the house. But the court failed to award the trust any amount for the alleged shortfall, nor did it address the merits of the successor trustee's claim for that shortfall in its statement of decision.

As we explain below, the trust's entitlement to the shortfall was a principal controverted issue at trial; the successor trustee properly sought a statement of decision on that specific issue and took the requisite steps to preserve the issue for appeal; and the successor trustee introduced substantial evidence to support a finding in his favor on that issue. We therefore reverse the judgment and remand the case for further proceedings.

I.

FACTS

A. *The Beyerl Family Trust and the Disclaimer Trust*

Decedent Joseph Beyerl (Joseph)[1] and his first wife created the Beyerl Family Trust in 1991 and restated the trust in 2002. The trust held title to a farm and rental property located in Fillmore, California (the Telegraph Property).

Joseph's first wife died in 2004, leaving Joseph as the Beyerl Family Trust's sole trustee. As permitted under the terms of the trust, Joseph elected to irrevocably disclaim his 50 percent interest in the Telegraph Property, and he transferred that interest into a separate disclaimer trust. As a result, Joseph's disclaimer trust and the Beyerl Family Trust each held a 50 percent interest in the Telegraph Property.

Under the terms of the Beyerl Family Trust, Joseph received income from the disclaimer trust's share of the Telegraph Property during his lifetime, but he could not use the principal until all nondisclaimed assets remaining in the Beyerl Family Trust had been exhausted.

B. *The Sale of the Telegraph Property*

In 2014, acting on behalf of both the disclaimer trust and the Beyerl Family Trust, Joseph sold the Telegraph Property for $825,000. The net sale proceeds totaled $778,233.29.

Joseph never segregated or allocated the Beyerl Family Trust's or the disclaimer trust's respective 50 percent interests in the net sale proceeds, which should have been $389,116.65 each. Instead, he deposited all the proceeds — $778,233.29 —

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[1] For clarity and ease of reference, and without intending any disrespect, we refer to the decedent and the parties by their first name, as several share the same surname. (See *Scott v. Thompson* (2010) 184 Cal.App.4th 1506, 1509.)

into a joint account held by him and his second wife, respondent Susana Austin Beyerl.[2] Before the transfer, Joseph and Susana's joint account contained only about $1,800.

A few weeks later, Joseph and Susana transferred $780,000 from that first joint account into a second joint account. Before the transfer, their second joint account contained only about $9,300.

C. *The Purchase of the Limerick Property*

The following month, Joseph used the funds in his and Susana's second joint account[3] to purchase a house in Placentia, California (the Limerick Property) for $648,000. After closing costs, the total consideration provided was $650,241.17.

Susana conceded at trial that Joseph used the Telegraph Property sale proceeds to purchase the Limerick Property. There was no evidence, however, on whether Joseph paid for the Limerick Property using $389,116.65 of disclaimer trust assets and $261,124.52 of Beyerl Family Trust assets, using $261,124.52 of disclaimer trust assets and $389,116.65 of Beyerl Family Trust assets, or using some other combination of disclaimer trust assets and Family Trust assets.

Further, despite using proceeds from the sale of the Telegraph Property to purchase the Limerick Property, Joseph did not take title to the Limerick Property in the name of the disclaimer trust or the Beyerl Family Trust. Instead, he took title to the Limerick Property in the name of his and Susana's living trust.

D. *The $130,000 Check to Susana*

After Joseph purchased the Limerick Property using funds from his and Susana's second joint account, that account had a remaining balance of about $139,250.

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[2] Respondent's name is spelled differently at various points in the record. For the sake of consistency, we adopt the spelling from the case caption.

[3] To be clear, Joseph and Susana transferred $15,000 from their second joint account back to the first joint account and then wrote a $15,000 check from that first joint account to cover the earnest money payment. They paid the remainder of the Limerick Property purchase price via a wire transfer from the second joint account.

Two months later, Susana's son, Vaughn Austin, arranged for a $130,000 transfer into Joseph and Susana's *first* joint account.[4] The record does not disclose where those funds originated, but there is some suggestion they may have come from Joseph and Susana's second joint account.[5]

That same day, Susana received a check for $130,000 written from that first joint account. The signature on the check does not appear to belong to either Joseph or Susana; it may have been written by her son Vaughn.

Joseph died less than a year later at the age of 94. After he died, his stepgrandson, appellant Paul Scholz, became the successor trustee of both the Beyerl Family Trust and the disclaimer trust.

E. *Pleadings and Trial*

Acting in his capacity as successor trustee, Paul filed a probate petition against Susana in her capacity as trustee of Joseph and Susana's living trust. He brought the petition under Probate Code section 850, subdivision (a)(3)(B), which allows a trustee to petition for a court order "[w]here the trustee has a claim to real or personal property, title to or possession of which is held by another." In his petition, Paul asked the trial court to order Susana "to return any and all proceeds from the sale of the [Telegraph Property] belonging to the Disclaimer Trust . . . directly to the Disclaimer Trust, or in the alternative, that the applicable ownership interest in the Limerick Property be fully vested in the Disclaimer Trust." Paul did not name Susana in her individual capacity.[6]

During the three-day bench trial on his petition, Paul asked the trial court to award the disclaimer trust a 60 percent interest in the Limerick Property, asserting the funds Joseph used to purchase the Limerick Property were traceable to the disclaimer

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[4] Vaughn apparently had Susana's power of attorney.

[5] At trial, an expert opined the $130,000 represented the $128,000 of Telegraph Property sale proceeds remaining after Joseph purchased the Limerick Property.

[6] Susana also filed a cross-petition against Paul, but it is not relevant to this appeal.

trust's 50 percent share of the Telegraph Property sale proceeds. He argued Joseph failed to segregate the disclaimer trust's 50 percent interest in the $778,233.29 of Telegraph Property sale proceeds ($389,111.65) and instead applied that $389,111.65 toward Joseph's and Susana's living trust's purchase of the Limerick Property for $650,241.17. Thus, contended Paul, the disclaimer trust was entitled to a 59.84 percent interest in the Limerick Property ($389,111.65 divided by $650,241.17).

In support, Paul presented expert testimony from a forensic accountant. Having reviewed various bank statements and property records, the accountant opined that the Beyerl Family Trust and the disclaimer trust each held a 50 percent interest in the Telegraph Property; Joseph used the Telegraph Property sale proceeds to purchase the Limerick Property; and assuming Joseph put 100 percent of the disclaimer trust's share of those proceeds towards the purchase of the Limerick Property, the disclaimer trust's interest in the Limerick Property would be 59.84 percent.

Susana responded that the *first* $389,116.65 used to purchase the Limerick Property did not come from the disclaimer trust's 50 percent share of the Telegraph Property proceeds, but rather from the *Beyerl Family Trust's* 50 percent share, and only the balance of the $648,000 purchase price (about $259,000) came from the disclaimer trust's share of the Telegraph Property proceeds. Thus, contended Susana, the disclaimer trust should receive at most a 40 percent interest in the Limerick Property ($259,000 divided by $648,000).

Paul responded that *if* the trial court found Joseph put only $261,124.17 of disclaimer trust funds toward the Limerick Property purchase price and awarded the disclaimer trust only a 40 percent interest in the Limerick Property, the court also should award the disclaimer trust a judgment for the $127,992 shortfall — i.e., the difference between the $389,116.65 owed to the disclaimer trust from the sale of the Telegraph Property and the $261,124.17 in disclaimer trust funds purportedly put toward the purchase of the Limerick Property. Paul further argued this $127,992 shortfall was

traceable to Susana, citing the $130,000 check written to Susana from her and Joseph's joint account just two months after the Limerick Property purchase. In support of this alternative theory of recovery, Paul's forensic accounting expert opined that if Joseph used only $261,124 of disclaimer trust funds to purchase the Limerick Property, the remaining $127,992 owed to the disclaimer trust was traceable to Susana through the $130,000 check.

In response, Susana argued Paul had not sued Susana in an individual capacity, but rather as trustee of Susana and Joseph's living trust, and Paul at most had traced the alleged $130,000 shortfall to Susana, not to the living trust.

F. *The Statement of Decision*

At the conclusion of the trial, counsel for both parties orally requested a statement of decision. The trial court made a note of the request and added there was no need for further requests.

After trial, the trial court issued a tentative statement of decision awarding the disclaimer trust only a 39.2 percent interest in the Limerick Property. It reasoned: "At the time of the sale of the [Telegraph Property], the Disclaimer Trust held a 50 [percent] interest which equated with $389,116.65. Paul argues that is how much of Disclaimer interest is owed by Suzana to him as trustee. Suzana argues that there is no proof that the funds used to buy the [Limerick Property] came *first* from the Disclaimer trust, and the remainder from the Family Trust's interest in the [Telegraph Property], over which Joseph had total control as trustee. She is correct: The funds were totally comingled, and because the total deposit from the farm's sale was substantially more than the total purchase price of the new house, there is no way to definitively accord which trust's interest paid the greater amount. The parties did nothing to dispel this quandary."

The tentative statement of decision went on: "The Court finds that it is most reasonable that Joseph used the funds from the Family Trust first, because, as Trustee of both trusts, there was no limitation on his usage of Family Trust assets,

whereas he *was* limited to using only income from the Disclaimer Trust, unless all principal from the Family Trust was exhausted first. And most pertinently, the burden of proof rested on [Paul] to prove each element of their requested remedy. Thus, the [Limerick Property] 'owes' an interest to the Disclaimer Trust equating with 39.2 [percent] of its value—the difference between the purchase price of the [Limerick Property] ($640,000) and the Family Trust's interest in the sale proceeds of the [Telegraph Property] ($389,116.65)."[7]

The trial court's tentative statement of decision specified it would become the court's statement of decision "unless within ten (10) days a party specifies one or more controverted issues or makes proposals not covered in the tentative decision." (See Cal. Rules of Court, rule 3.1590(c)(4) (rule 3.1590) [authorizing this practice].) In response, Paul filed an "Objection" to the tentative statement of decision, asserting the court had failed to address the shortfall issue and asking the court to "clarify" and "revise" its statement of decision accordingly. He explained: "The court found that the Family Trust expended $389,116.65, and that the purchase price of the [Limerick Property] was $640,000, hence $250,883.35 of Disclaimer Trust monies were used to purchase the [Limerick] Property. . . . [¶] By this rationale, there remains a 'shortfall' of $138,233.30 that [Paul] contends was Disclaimer Trust funds. [Paul] presented evidence that, on January 17, 2015, [Susana] received $130,000 from [the first joint account], the very same account into which the sum of $[7]78,233.29 was deposited from the sale of [Telegraph Property]. . . . [¶] [Paul] respectfully requests that the court amend its Statement of Decision to address this issue, and respectfully renews his request that a judgement be entered against [Susana] in favor of the Disclaimer Trust, in that amount."

[7] It is unclear why the trial court found the purchase price of the Limerick Property to be $640,000. The evidence reflects the purchase price was in fact $648,000, and the total consideration provided after closing costs was $650,241.17.

The trial court reviewed Paul's objection, but nevertheless issued a final statement of decision that was nearly identical to its tentative. The only substantive change from the tentative was the addition of the following final sentence: "The Court orders that the Disclaimer Trust's interest in the [Limerick] property is limited to 39.2 [percent] of the value of the property, but that any 'corrective' or partitioning action should only be taken under a Petition for Instructions per Probate Code section 850 with the Court's review and approval." The final statement of decision did not address the shortfall issue at any point.

So far as the record discloses, Paul did not make any further objections after that. The trial court entered a judgment awarding the disclaimer trust a 39.2 percent interest in the Limerick Property. Paul appealed.

II.

DISCUSSION

Paul does not challenge the trial court's finding that the disclaimer trust had only a 39.2 percent interest in the Limerick Property. Instead, Paul contends the court committed reversible error by failing to make required findings on the shortfall issue. We agree.

A. *Guiding Principles*

As a general matter, "upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required." (Code Civ. Proc., § 632; all further undesignated statutory references are to this code.) Upon a party's timely and proper request, however, the trial court must "issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial." (*Ibid.*)

A properly prepared statement of decision can serve several important purposes: it "may be vitally important to the litigants in framing the issues, if any, that need to be considered or reviewed on appeal"; it "may render obvious the futility of an

appeal"; and it "may also be of considerable assistance to the appellate court." (*Miramar Hotel Corp. v. Frank B. Hall & Co.* (1985) 163 Cal.App.3d 1126, 1129.) It also gives the trial court ""an opportunity to place upon [the] record, in definite written form, its view of the facts and the law of the case."" (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 982 (*Thompson*).)

In evaluating the adequacy of a statement of decision, a threshold question is whether the party's request for statement of decision was sufficiently specific: the request "shall specify those controverted issues as to which the party is requesting a statement of decision." (§ 632; see rule 3.1590(c)(4) & (d) [similar]; *City of Coachella v. Riverside County Airport Land Use Com.* (1989) 210 Cal.App.3d 1277, 1292-1293 (*City of Coachella*) ["a general, nonspecific request for a statement of decision does not operate to compel a statement of decision as to all material, controverted issues"].)

This requirement is important: a party who does not properly request a statement of decision "waives any objection to the trial court's failure to make all findings necessary to support its decision," and "the appellate court applies the doctrine of implied findings and presumes the trial court made all necessary findings supported by substantial evidence." (*Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 970.)

If properly requested, a statement of decision must "explain[ ] the factual and legal basis for [the trial court's] decision as to each of the principal controverted issues at trial." (§ 632.) A statement of decision "will be deemed adequate 'if it fairly discloses the determinations as to the ultimate facts and material issues in the case.'" (*Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26, 45 (*Altavion*).) "'[T]he term "ultimate fact" generally refers to a core fact, such as an essential element of a claim.'" (*Metis Development LLC v. Bohacek* (2011) 200 Cal.App.4th 679, 689 (*Metis*).) A "material issue" "'is one which is relevant and essential to the judgment and closely and directly related to the trial court's determination

of the ultimate issues in the case.'" (*R. E. Folcka Construction, Inc. v. Medallion Home Loan Co.* (1987) 191 Cal.App.3d 50, 53-54.)

By contrast, a statement of decision need not "'address *all* the legal and factual issues raised by the parties.'" (*Yield Dynamics, Inc. v. TEA Systems Corp*. (2007) 154 Cal.App.4th 547, 559 (*Yield Dynamics*), italics added; see *Bauer v. Bauer* (1996) 46 Cal.App.4th 1106, 1118 [court need not "make an express finding of fact on every factual matter controverted at trial"].) Nor must the trial court include evidentiary facts or conclusions of law in its statement of decision. (*Metis, supra,* 200 Cal.App.4th at p. 689.) "[T]he distinction between ultimate facts, which must be resolved in a statement of decision, and evidentiary facts, which do not, is sometimes a fine one, and whether the court has issued a proper statement of decision can then become a close question." (*Id*. at p. 691, fn.7.)

Whether a trial court's statement of decision adequately explains the factual and legal basis for its decision on the principal controverted issues at trial impacts the applicable standard of review. If the statement of decision properly "'sets forth the factual and legal basis for the decision, any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision.'" (*Altavion, supra*, 226 Cal.App.4th at pp. 45-46.) Stated differently, "the appellate court [will] presume that the trial court made all factual findings necessary to support the judgment so long as substantial evidence supports those findings." (*SFPP v. Burlington Northern & Santa Fe Ry. Co*. (2004) 121 Cal.App.4th 452, 462.)

However, "[w]hen a statement of decision does not resolve a controverted issue, or if the statement is ambiguous and the record shows that the omission or ambiguity was brought to the attention of the trial court . . . prior to entry of judgment . . . it shall not be inferred on appeal . . . that the trial court decided in favor of the prevailing party as to those facts or on that issue." (§ 634; see *Yield Dynamics, supra,*

154 Cal.App.4th at p. 558.) In other words, the "doctrine of implied findings may not be invoked when the complaining party has made known to the trial court his claim as to the inadequacy of the findings." (*Guardianship of Brown* (1976) 16 Cal.3d 326, 333 (*Brown*).)

If "the complaining party has introduced substantial evidence to support a finding in his favor on such an issue, reversal is compelled." (*Brown*, *supra*, 16 Cal.3d at p. 333; see *Hemmerling v. Tomlev, Inc*. (1967) 67 Cal.2d 572, 576 [similar]; *Thompson, supra,* 6 Cal.App.5th at p. 983 [reversal appropriate when "'court fails to make a finding on a particular matter'" if "'the evidence is sufficient to sustain a finding in favor of the complaining party'"]; see also *F.P. v. Monier* (2017) 3 Cal.5th 1099, 1108 [trial court's total failure to issue a statement of decision is subject to harmless error analysis on appeal].)

B. *Application*

Applying these principles here, we conclude the trial court committed reversible error by failing to make required findings on the shortfall issue in its statement of decision.

To start, Paul specifically requested a statement of decision on the shortfall issue. As noted, the trial court's tentative statement of decision specified it would become its final statement of decision "unless within ten (10) days *a party specifies one or more controverted issues* or makes proposals not covered in the tentative decision." (Italics added.) (See rule 3.1590(c)(4).) In response, Paul filed an "Objection" to the tentative statement of decision, asserting the court had failed to address the shortfall issue, explaining why he believed the disclaimer trust also should receive an award for the shortfall, and asking the court to "amend" its statement of decision to address this

issue. This request comported with the specificity requirements of section 632 and rule 3.1590.[8]

Further, the shortfall issue was indeed a principal controverted issue at trial. Paul did not base his petition solely on obtaining an ownership interest in the Limerick Property, as Susana suggests. To the contrary, Paul's petition expressly sought a court order directing Susana "*to return any and all proceeds* from the sale of the [Telegraph Property] belonging to the Disclaimer Trust . . . directly to the Disclaimer Trust, or in the alternative, that the applicable ownership interest in the Limerick Property be fully vested in the Disclaimer Trust." (Italics added.) As is evident from this prayer for relief, Paul sought to make the disclaimer trust whole by reclaiming the loss of $389,000 in proceeds from the sale of the Telegraph Property — whether in the form of a property interest, a monetary judgment, or otherwise. As Paul puts it on appeal, he "set out to obtain the return of 100 [percent] of the Disclaimer Trust funds, not just the amount traceable to the purchase of the Limerick Property."

Paul's arguments and evidence at trial were consistent with that goal. For example, as noted above, Paul's expert witness testified the $128,000 shortfall was traceable to Susana in the form of the $130,000 check. And during his closing argument, Paul's attorney argued that if the trial court awarded the disclaimer trust only a 40 percent interest in the Limerick Property, the court also should award the disclaimer trust a judgment for the shortfall. The shortfall issue was not merely an evidentiary issue, as Susana suggests; rather, it was a *material* issue going to the core of Paul's petition for relief, and thus constituted a principal controverted issue.

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[8] By comparison, the parties' oral requests for a statement of decision at the conclusion of trial failed to identify any controverted issues for the court to address and were thus ineffective. (*Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1394; *City of Coachella, supra,* 210 Cal.App.3d at pp. 1292-1293.)

Despite Paul's request for a statement of decision on the shortfall issue, the trial court's statement of decision was silent on the issue. The statement of decision awarded the disclaimer trust a 39.2 percent interest in the Limerick Property based on its finding that Joseph and Susana used $250,883.35 in disclaimer trust assets toward the $640,000 [*sic*] purchase price. But the court did not decide whether the disclaimer trust *also* was entitled to recover the shortfall.

As a result of this omission, the trial court left several key questions unanswered. What happened to the portion of the disclaimer trust's $389,111.65 interest in the Telegraph Property sale proceeds that Joseph did *not* put toward the Limerick Property purchase price? Did Paul properly trace those proceeds to Susana and Joseph's living trust? If so, may the disclaimer trust recover those proceeds under Probate Code section 850? The trial court's statement of decision did not address those core questions.

Susana asks us to infer from the statement of decision that she did not receive the alleged shortfall of disclaimer trust funds. She is not entitled to that inference. "When a statement of decision does not resolve a controverted issue, or if the statement is ambiguous and the record shows that the omission or ambiguity was brought to the attention of the trial court . . . prior to entry of judgment . . . , it shall not be inferred on appeal . . . that the trial court decided in favor of the prevailing party as to those facts or on that issue." (§ 634.) Here, the trial court's tentative statement of decision did not resolve the controverted shortfall issue, and Paul brought that omission to the court's attention in his written "objection" to the tentative statement of decision.[9] Thus, section

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[9] Normally, a party's request specifying the particular issue on which he or she desires a statement of decision (§ 632) and the party's act of bringing a deficiency in the resulting statement of decision to the trial court's attention (§ 634) must be a "two-step process." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1134; *Thompson, supra*, 6 Cal.App.5th at p. 982.) "The second step is not a substitute for the first." (*Thompson*, at p. 982.) Here, however, the steps were somewhat combined. This seems to be in large part because the trial court invoked rule 3.1590(c)(4), which allows a court to issue a tentative statement of decision (as opposed to a tentative ruling or minute order) that will

634 bars us from inferring Susana did not receive the shortfall of disclaimer trust funds. (Cf. *Yield Dynamics, supra*, 154 Cal.App.4th at pp. 558-560 [section 634 did not apply where appellant failed to specify principal controverted issues in its initial request and did not bring alleged omission to court's attention]; *Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 61 [section 634 did not apply where appellants "neither requested a statement of decision . . . nor informed the trial court of any ambiguities or omissions in its findings in the minute order"].)

We next consider the question of what relief, if any, Paul is entitled to on appeal. "'[E]ven though a court fails to make a finding on a particular matter, if the judgment is otherwise supported, the omission is harmless error *unless* the evidence is sufficient to sustain a finding in favor of the complaining party which would have the effect of countervailing or destroying other findings.'" (*Thompson, supra,* 6 Cal.App.5th at p. 983, italics added.) In other words, if "the complaining party has introduced substantial evidence to support a finding in his favor on such an issue, reversal is compelled." (*Brown, supra,* 16 Cal.3d at p. 333.) "Substantial evidence is evidence of ponderable legal significance." (*Conservatorship of Ramirez* (2001) 90 Cal.App.4th 390, 401.)

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become the final statement of decision "unless within ten (10) days a party specifies one or more controverted issues or makes proposals not covered in the tentative decision." In response, Paul timely filed an "Objection" notifying the court in specific terms that its tentative statement of decision failed to address the shortfall issue, explaining why he believed the disclaimer trust also should receive an award for the shortfall, and asking the court to address the issue in its final statement of decision. There is no question, on this record, that Paul both "specif[ied] those controverted issues [on which he was] requesting a statement of decision" (§ 632) *and* brought "the omission or ambiguity . . . to the attention of the trial court . . . prior to entry of judgment" (§ 634). Further, the court reviewed Paul's objection yet declined to make substantive changes addressing the shortfall issue when finalizing its statement of decision. Thus, the fact Paul completed the "two-step" process via just one filing is of no consequence.

We conclude Paul met that burden. The evidence reflects the disclaimer trust and Beyerl Family Trust each held a 50 percent interest in the Telegraph Property, and each should have received $389,116.65 in proceeds from its sale. Instead, those funds were commingled and put into Joseph and Susana's joint account. Joseph and Susana purchased the Limerick Property for $650,241.17 just a month later, funding the purchase from their joint account. As the trial court noted, it was unclear whether they used $389,116.65 of disclaimer trust assets and $261,124.52 of Family Trust assets, or whether they used $261,124.52 of disclaimer trust assets and $389,116.65 of Family Trust assets. Citing the absence of restrictions on Joseph's use of Family Trust assets, the court concluded it was the latter, and Paul does not challenge that determination on appeal. Because only $261,124.52 of disclaimer trust assets went toward the $650,241.17 purchase price, the disclaimer trust should have received a 40.16 percent interest in the Limerick Property.

As for the shortfall — i.e., the remaining $127,992 of disclaimer trust assets from the sale of the Limerick Property that Joseph did *not* use in purchasing the Telegraph Property — Paul provided substantial evidence those funds were traceable to Susana via the $130,000 check written just two months after the Limerick Property closed. Circumstantially, the $130,000 check was remarkably close in amount to the $127,992 shortfall, and the check was written just two months after the Limerick Property closed. Further, Paul's forensic accounting expert opined that if Joseph used only $261,124 of disclaimer trust funds in purchasing the Limerick Property, the remaining $128,000 or so owed to the disclaimer trust were traceable to Susana through the $130,000 check.[10]

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[10] Noting Paul sued Susana only in her capacity as trustee of Joseph and Susana's living trust, not as an individual, Susana argues in passing there was no evidence the $130,000 check was written to her as trustee of the trust. Because she provides "no separate argument heading or analysis of the issue," however, we "deem the argument waived." (*Roe v. McDonald's Corp*. (2005) 129 Cal.App.4th 1107, 1114.

Further, the trial court's failure to make a finding on the shortfall issue was not harmless. The shortfall amount equated to roughly one-third of the disclaimer trust funds sought in Paul's petition.

Reversal is therefore warranted. The court in its discretion may reopen this case to receive further evidence on the shortfall issue. (See *Brown*, *supra*, 16 Cal.3d at p. 338 fn.7.) On remand, the court should take into account that the total consideration provided for the Limerick Property was $650,241.17, not $640,000 as stated in its statement of decision.

III.

DISPOSITION

The judgment is reversed and the matter is remanded to the trial court for further proceedings consistent with this decision. In the interests of justice, each party shall bear his or her own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

ARONSON, J.

WE CONCUR:

MOORE, ACTING P. J.

FYBEL, J.